



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON DC 20007

MAILED

SEP 07 2011

OFFICE OF PETITIONS

In re Patent No. 7,986,306	:	
Eich et al.	:	DECISION ON APPLICATION
Issue Date: July 26, 2011	:	FOR
Application No. 10/579,483	:	PATENT TERM ADJUSTMENT
Filed: May 16, 2006	:	
Attorney Docket No.026032-5054	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR PATENT APPLICATION UNDER 37 CFR §1.705(b)" filed August 31, 2011, requesting the determination of patent term adjustment under 35 U.S.C. 154(b) be corrected to eight hundred twenty-one (821) days.

The application for patent term adjustment under 37 CFR 1.705(b) is DISMISSED AS UNTIMELY FILED.

Patentees are given TWO (2) MONTHS to respond to this decision. No extensions of time will be granted under 37 CFR 1.136(a).

35 U.S.C. 154(b) provides for patent term adjustment for examination delay. Pursuant to 35 U.S.C. 154(b)(3)(B) and implementing regulation 37 CFR 1.705, an applicant shall receive an initial determination of patent term adjustment with the mailing of the Notice of Allowance and shall be given one opportunity to request reconsideration of that determination by way of filing of an application for patent term adjustment prior to the payment of the issue fee.

On March 14, 2011, the Office mailed an initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, indicating that the patent term adjustment at the time of the mailing of the notice of allowance was 371 days. The issue fee payment was received in the Office on June 13, 2011. No filing of an application for patent term adjustment under 37 CFR 1.705(b) preceded the payment of the issue fee. On July 26, 2011, the above-identified application matured into U.S. Patent No. 7,986,306 with a revised patent term adjustment of 677 days.

Patentees dispute the reduction of 98 days pursuant to 37 CFR 1.704(c)(7) associated with the submission of a reply with an omission on September 27, 2010. Additionally, patentees assert that they are entitled to a period of adjustment of 46 days pursuant to 37 CFR 1.702(a)(2) for the period "between January 27, 2011 (4 months after the submission of the original, compliant amendment) and March 14, 2011 (mailing date of the Notice of Allowance and Fees Due/Notice of Allowability.)" *Petition, p. 2.*

The Office notes that the initial Determination of Patent Term Adjustment mailed March 14, 2011, was based in part on the reduction of 98 days associated with the submission of a reply with an omission on September 27, 2010. The period for filing an application for patent term adjustment requesting reconsideration of the initial Determination of Patent Term Adjustment at the time of mailing of the notice of allowance ended June 13, 2011, upon payment of the issue fee. Accordingly, it is appropriate to dismiss this petition as untimely filed under 37 CFR 1.705(b).

Consideration under 37 CFR 1.705(d) is not appropriate. As stated in MPEP 2730, § 1.703(d) provides that:

If there is a revision to the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates or should have indicated a revised patent term adjustment, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section. Any

request for reconsideration under this section that raises issues that were raised, or could have been raised, in an application for patent term adjustment under paragraph (b) of this section shall be dismissed as untimely as to those issues.

The issues raised should have been timely raised on application for patent term adjustment under 37 CFR 1.705(b).

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions